

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENARD PETERSON,

Petitioner,

Case No. 2:12-cv-11109

v.

Honorable Patrick J. Duggan

PAUL KLEE,

Respondent.

**OPINION AND ORDER DENYING PETITIONER'S MOTION FOR
IMMEDIATE RELEASE FROM CUSTODY**

Petitioner Denard Peterson ("Petitioner"), a Michigan state prisoner in the custody of the Michigan Department of Corrections, has filed a petition for writ of habeas corpus challenging his plea-based conviction of criminal sexual conduct in the first degree. On May 31, 2001, Petitioner was sentenced to twenty-three years and nine months to forty years of imprisonment. Presently before the Court is Petitioner's Motion for Immediate Release from Custody. (ECF No. 14.) For the reasons stated herein, the Court denies Petitioner's motion.

I. ANALYSIS

Petitioner seeks immediate release from custody pending disposition of his habeas petition. Petitioner's argument in favor of release on bail relies upon Federal Rule of Appellate Procedure 23(c), which provides:

While a decision ordering the release of a prisoner is under review, the prisoner must—unless the court or judge ordering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety.

Although the United States Supreme Court has held that this rule “undoubtedly creates a presumption of release from custody[,]” *Hilton v. Braunskill*, 481 U.S. 770, 774, 107 S. Ct. 2113, 2117 (1987), Rule 23(c) addresses situations where a party appeals a district court’s decision granting habeas relief and ordering a petitioner’s release. This Court has not granted habeas relief in this case. Rule 23(c), therefore, is inapplicable to the instant case.

II. CONCLUSION AND ORDER

For the reasons set forth above, the Court finds that Petitioner is not entitled to immediate release from custody.

Accordingly,

IT IS ORDERED that Petitioner’s Motion for Immediate Release from Custody, (ECF No. 14), is **DENIED**.

Date: June 6, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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